

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES,

Plaintiff,

vs.

JOSE LUIS SOTO-GAMBOA,

Defendant.

CASE NO. 12cr2113-
LAB/12cv2311-LAB

ORDER DENYING 28 U.S.C.
§ 2255 HABEAS MOTION

17 Jose Luis Soto-Gamboa, pursuant to a plea agreement, pleaded guilty to one count
18 of being a removed alien found in the United States. Under the terms of the plea agreement
19 he waived appeal or collateral attack, and received the benefit of a Fast Track
20 recommendation. (Docket no. 14 (Plea Agreement).) On September 20, 2012, the Court
21 entered judgment, sentencing Soto-Gamboa to 57 months' imprisonment, followed by three
22 years' supervised release. The very next day, he filed a motion pursuant to 28 U.S.C. § 2255
23 seeking a sentence reduction.

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1 Soto-Gamboa's motion is completely frivolous. First, he waived appeal and collateral
 2 attack and received substantial benefits by doing so.¹ Second, he argues that as an alien
 3 subject to deportation, he is subject to heavier penalties than U.S. citizens. This argument
 4 is nonsensical, because the offense he pleaded guilty to, by definition can only be committed
 5 by aliens who have been deported. Third, his motion is boilerplate: it is a nearly-identical
 6 copy of an existing motion with only his name and details of his arrest and conviction typed
 7 into a blank. The arguments it raises have been repeatedly rejected by this Court and other
 8 courts as meritless. See, e.g., *Patterson-Romo v. United States*, 2012 WL 2060872
 9 (S.D.Cal., June 7, 2012) (Gonzalez, J.); *United States v. Beltran-Palafox*, 2012 WL 899262
 10 at *2 and n.14 (D.Kan., Mar. 16, 2012); *Aguilar-Marroquin v. United States*, 2011 WL
 11 1344251 (S.D.Cal., Apr. 8, 2011) (Huff, J.); *Rendon-Inzunza v. United States*, 2010 WL
 12 3076271 (S.D.Cal., Aug. 6, 2010) (Burns, J.).

13 Photocopies of this boilerplate motion are apparently circulating among inmates, as
 14 a kind of legal form. Each inmate types his own name and information into the form and files
 15 it. boilerplate portions of the motions are visually identical, even incorporating the same
 16 typographical errors. These motions are routinely denied, not because they are boilerplate,
 17 but because they are meritless.

18 At the same time, it is worth pointing out that filing a boilerplate motion one doesn't
 19 understand is foolish and wrong. First, it is dishonest to promise not to file a § 2255 motion,
 20 and then immediately break that promise without explanation and for no good reason.
 21 Second, it could result in terrible legal consequences for the defendants who do this. For
 22 example, Soto-Gamboa's plea agreement provides that if he files an appeal or collaterally
 23 attacks his sentence (except under very limited circumstances), the government is released
 24 from any promise it made in the plea agreement not to prosecute him for other crimes, and

25 ¹ Under his plea agreement, Soto-Gamboa waived appeal or collateral attack unless
 26 he was sentenced above the guideline range recommended by the government pursuant to
 27 the plea agreement. That guideline range was 46 to 57 months. (See Docket no. 14 at
 28 7:8–8:28) (sections of plea agreement detailing what government's recommendations were
 to be); Docket no. 20 (government's sentencing summary chart, making recommendations
 as agreed, and calculating guideline range of 46 to 57 months.) He was sentenced to 57
 months, within the recommended range, and therefore waived appeal.

1 many use any admissions he made in the plea agreement as evidence when prosecuting
2 him. Also, under 28 U.S.C. § 2244(a) and § 2255(h), once a defendant has filed a § 2255
3 motion, district courts generally cannot consider a later § 2255 motion the defendant might
4 want to bring. Filing a frivolous motion such as this one could make it difficult or impossible
5 for defendants to file § 2255 motions later, if they should discover a legitimate reason for
6 doing so.

7 The motion is **DENIED**.

9 || IT IS SO ORDERED.

10 || DATED: October 4, 2012

Larry A. Bunn

HONORABLE LARRY ALAN BURNS
United States District Judge